

UNIVERSITY OF CALIFORNIA, BERKELEY

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RESIDENTIAL AND STUDENT SERVICE PROGRAMS
2610 CHANNING WAY #2272
BERKELEY, CALIFORNIA 94720-2272

February 18, 2011

Ernest Williamson
Career Sr. Custodian - Unit 3 Residence Halls
[REDACTED]

Dear Ernest,

In accordance with Article 7 of the UC/AFSCME Agreement for Service Employees, this is a notice of intent to dismiss you from University employment effective February 28, 2011. This intended action is based on your misconduct.

Specifically, you have violated the University of California Policy on Sexual Harassment (copy enclosed) by violating a [REDACTED] resident's privacy by staring at her while she showered in the [REDACTED] bathroom [REDACTED] during October 2010.

Background

Housing and Dining Operations is a department within Residential and Student Services Programs (RSSP), which serves as an Auxiliary of UC Berkeley.

The mission of Housing and Dining Operations is to provide the highest quality services and programs that ease a student's transition through the University and in the greater community, and to provide all customers—students, faculty, staff and guests—with a quality customer experience. On the housing side, custodial staff members have a key role in ensuring all customers experience a clean, comfortable and safe residential experience.

University Policy on Sexual Harassment in part states, "The University is committed to creating and maintaining a community in which all persons who participate in University programs and activities can work together in an atmosphere that is free from all forms of harassment, exploitation, or, intimidation, including sexual harassment. Thus, sexual harassment is prohibited by law and University policy."

On October 30, 2010 the Campus Climate and Compliance Office (CCAC) was contacted by RSSP Associate Director Stacy Holguin with a report of inappropriate behavior made by [REDACTED]. You were placed on paid investigatory leave and an investigation was conducted by Title IX Compliance Officer Denise Oldham. Her investigation report is enclosed.

Investigation Findings

Ms. Oldham met with you about [REDACTED] allegation and AFSCME Representative [REDACTED] was present. Ms. Oldham concluded that your responses lacked credibility. Ms Oldham described in her report that you made inconsistent statements about bathroom cleaning procedures (p 9 of report). She also noted that during the meeting you expressed a desire to apologize to [REDACTED], although you had claimed that you have not behaved in any way that would warrant an apology. It is her expert opinion that the offer of an apology is implausible in the context of your specific denial of ever being in the bathroom at the same time as [REDACTED].

Ms. Oldham found that the accounts of the complainant, [REDACTED], and two [REDACTED] witnesses were consistent in that they all reported that you have a "tendency to stare [REDACTED] in a way that created discomfort." Their separate accounts of your misconduct corroborate with [REDACTED] as well and support that you have engaged in similar behavior that violated [REDACTED] privacy on previous occasions. According to one [REDACTED] witnesses' account, you once allowed her to enter the bathroom when it was closed for cleaning to take a shower, as she later heard you working in another shower stall while she showered nearby.

Your response was found to be inconsistent with the procedures of the department. It was noted by Officer Oldham that during your interview you made inconsistent statements about the bathroom cleaning procedure, at one point describing the procedure as needing to notify occupants of imminent cleaning, allowing them to leave, putting up a sign that indicates the bathroom is closed for cleaning and then proceeding to clean the bathroom space after occupants had left. Later during the interview you stated that you had been instructed that you could proceed with cleaning while [REDACTED] were in the shower and that it was an acceptable practice. Your latter statement contradicts information presented by your senior custodial supervisor J.C. Farr, who stated that all custodians should know that they should never attempt to clean the toilet/shower portion of a bathroom while that area is occupied [REDACTED].

Officer Oldham found the alleged incident as described by [REDACTED] to be plausible. Your records indicate that you were the only custodian assigned to the [REDACTED] and that you were present during the relevant time period. Further, the description offered by [REDACTED] of the person she saw looking at her in the shower corresponds with your physical stature, appearance and dress.

Your conduct has had a negative impact on the University and RSSP. Your misconduct does not justify your continued employment and thus you will be dismissed from your employment effective February 18, 2011.

You will continue on paid administrative leave pending the final decision on this matter. You are not to contact any UC employees other than myself or Employee Relations Manager Javier Gonzalez while you are on this leave.

If you believe this action should not take place or have any other statements regarding this matter, you have the right to respond to this notice either orally or in writing, within 10 calendar days from the date of issuance. Please direct your response to Associate Director of Cal Dining Charles Davies at 2610 Channing Way #2272 Berkeley, Ca. 94720 or (510) 642-8810.

Sincerely,

Mark Kinnard
Principal Custodial Supervisor - Southside


Attachments: Proof of Service
Report of Investigation and Findings
University of California Policy on Sexual Harassment

cc: Employee Personnel File
Assistant Director Chana Bailey (w/attachments)
Employee Relations Manager Javier Gonzalez (w/attachments)
Employee Relations Specialist Jessica Weld (w/attachments)
Skelly Reviewer, Charles Davies (w/attachments)
AFSCME Representative, Liz Perlman(w/attachments)

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OFFICE OF THE ASSOCIATE VICE CHANCELLOR
RESIDENTIAL AND STUDENT SERVICE PROGRAMS
CAL DINING
2610 CHANNING WAY
BERKELEY, CALIFORNIA 94720-2272

March 15, 2011

Mark Kinnard
Principal Custodial Supervisor – Southside
HOME - RSSP

RE: Notice of Intent to Terminate for Ernest Williamson

This is a summary of my findings and recommendation for the final decision regarding the Notice of Intent to Terminate for HOME employee, Ernest Williamson.

Mr. Williamson was served this Notice for misconduct related to alleged violation of Title IX and the University of California's Policy on Sexual Harassment.

Review Activities

Mr. Williamson was served Notice on February 17, 2011 and was provided with copies of the investigation findings and supplemental information related to the investigation and decision to terminate (e.g. University of California Policy on Sexual Harassment).

I also received copies of the above materials and reviewed these documents on February 22. On February 23, I was contacted via email by [REDACTED], AFSCME representative for Mr. Williamson, who requested me to schedule the Skelly Hearing for Friday, March 4th. I responded to her email that I could accommodate her request to meet, and scheduled the meeting for 2 pm on Friday, March 4th. I advised [REDACTED] that we would meet in the Los Angeles Room in the RSSP building.

On March 4th at around 2:10 pm, Mr. Williamson appeared along with his representative, Harold Bowles. [REDACTED] was not present. I met with Mr. Williamson and Mr. Bowles for approximately 1 hour. After introductions and explanation of my role as the Skelly Hearing officer, Mr. Bowles began the meeting by presenting me with a 38 page "Skelly Meeting Argument Brief" which he proposed to read verbatim. After 3 minutes, I stopped the meeting and excused myself in order to get clarification from Javier Gonzalez about whether or not this was standard protocol. I was told by Mr. Gonzalez that the meeting should last an hour and that if Mr. Williamson and his representative chose to use that time by reading their statement, they could do so. I returned to the meeting room and advised Mr. Bowles and Mr. Williamson that they could proceed and alerted them to the time limit of 1 hour. Mr. Bowles commented to me that he had never heard of a time limit for a Skelly Hearing. After approximately 40 minutes, Mr. Bowles finished reading his brief and asked to present additional documents; specifically sworn affidavits in defense of Mr. Williamson made by 4 HOME staff members (Custodial Supervisor, J.C. Far; Custodial Supervisor, Dwayne Jefferson; Custodial Supervisor, Rodney Thomas; Custodial Supervisor, Willie Ruth Jones) At that time, I requested that before I proceeded to review the affidavits, I would like to ask clarifying questions of Mr. Williamson.

Recommendation

After reviewing the relevant documents made to me, and after hearing from the employee and the employee's representative, and after follow up questions with HOME Principal Custodial Supervisor, Mark Kinnard, I recommend that the proposed termination be upheld.

The University's intended action is based on alleged misconduct, specifically the violation of the University of California's Policy on Sexual Harassment, has been proved and, therefore, given the severity of the incident and indications of past behavior, I believe that HOME management has acted in a responsible manner. After reviewing the details of the investigation and the additional statements and affidavits offered to me during the hearing, I found Mr. Williamson's case to not be credible and the supporting documents to be contradictory.

In summary, I believe that there are reasonable grounds for the proposed termination.

Sincerely,



Charles Davies
Skelly Review Hearing Officer

cc: Javier Gonzalez, RSSP HR

Attachments: Skelly Meeting Argument Brief, Dated March 4, 2011
Sworn Affidavits (4), Dated March 3-4, 2011

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HOUSING, OPERATIONS, MAINTENANCE, ENVIRONMENT
2610 Channing Way
BERKELEY, CALIFORNIA 94720-2292

March 21, 2011

Mr. Ernest Williamson
Career Custodian
[REDACTED]

Dear Ernest,

This letter is to inform you that effective March 29, 2011, you are being terminated due to misconduct for violating the University's Policy on Sexual Harassment.

On February 18th you were issued an intent to dismiss notice. You exercised your rights to a Skelly Review and your Skelly Review took place on February 23, 2011. Skelly Reviewer Charles Davies has upheld the termination. I have included a copy of his decision for your review.

Please return to me by March 30, 2011 any University property in your possession.
Your final paycheck will be mailed to the address listed above.

You may review the UC/AFSCME Agreement for possible appeal rights.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Kinnard".

Mark Kinnard
Principal Custodial Supervisor, RSSP

Proof of Service

cc: Employee Personnel File (w/attachments)
Payroll Manager, Cynthia Davis (w/out attachments)
ER Advocate Jessica Weld (w/attachments)
✓ER Manager, Javier Gonzalez (w/attachments)
AFSCME Rep, Liz Perlman (w/attachments)

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release (hereafter, "Agreement") is entered into by and between ERNEST WILLIAMSON (hereafter, "Williamson" or "Grievant"), the American Federation of State, County and Municipal Employees – Local 3299 ("AFSCME" or the "Union"), and THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, on behalf of the UNIVERSITY OF CALIFORNIA, BERKELEY campus (hereafter, "University" or "UCB") (collectively referred to as the "Parties").

RECITALS

On September 16, 1997, Williamson began working at the University, and most recently, he held the position of Senior Custodian in Housing and Dining Services. His salary was \$35,208.00 per year.

On April 1, 2011, Williamson filed a grievance [No. SX -01-004-11] pursuant to Article 7, Discipline and Dismissal, of the Agreement between the University of California and the American Federation of State, County and Municipal Employees – Local 3299 (AFSCME). In the grievance, Williamson argued that the University terminated his employment in violation of Article 7 of the Agreement based on among other things violations of the just cause requirement. The University denies the allegations.

In order to avoid the costs and inconvenience of litigation and/or administrative proceeding, to facilitate Williamson's transition from University employment, and to settle fully and finally all differences that may exist between them relating to Williamson's employment and separation from employment, the Parties have reached the mutual decision to end the employment relationship on the terms and conditions outlined in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the Parties agree as follows:

1. **PURPOSE OF AGREEMENT:** The purpose of this Agreement is to resolve any and all claims arising out of Williamson's employment and separation from employment and to settle fully and completely any and all related disputes between the Parties or its Board of Regents, officers, agents or employees (current or former). The Parties agree further that this Agreement shall not be construed as an admission by Williamson or the University, or any of its Board

of Regents, officers, agents or employees (current or former) of any improper or unlawful treatment of each other.

2. **WITHDRAW GRIEVANCE-ARBITRATION:** Williamson warrants and represents that other than the grievance identified in the Recitals above, he is not a plaintiff, claimant or party in any suit, action or legal or administrative proceeding in which the University Releasees are parties. The execution of this Agreement by Williamson and the Union shall constitute a withdrawal of Grievance No. SX-01-004-11 and acknowledgment and agreement that once this Agreement becomes final all claims raised in Grievance No. SX-01-004-11 have been fully and finally resolved to their satisfaction. Within ten (10) business days of the Effective Date of this Agreement, the Union shall notify the Arbitrator in writing (with a copy to the University Representative) of this settlement and request withdrawal and closure of Grievance No. SX -01-004-11.
3. **EFFECTIVE DATE OF SEPARATION:** The Parties agree that Williamson will retroactively resign from his position with the University, effective March 29, 2011. This term is self-executing and requires no further act of either party. All rights and benefits provided to Williamson pertaining to the separation are described in this Agreement and are provided in lieu of any rights he may have had under any collective bargaining agreement or University policy.
4. **COBRA RIGHTS:** The University will provide to Employee under separate cover, information regarding rights he may have to COBRA health insurance continuation and retirement benefits, and to the continuation of life and disability insurance. To the extent that Employee has such rights, nothing in this Agreement will impair those rights.
5. **SEVERANCE PAY:** In consideration for the covenants in this Agreement, the University will pay Williamson a severance payment in the amount of \$46,944.00, subject to appropriate withholding as described in paragraph 6 of this Agreement. It is further agreed that within five (5) business days from the Effective Date of this Agreement, the University will transmit this amount to [REDACTED] by federal express in the form of a check made payable to Ernest Williamson.
6. **WITHHOLDING:** Williamson acknowledges and understands that the payment made by the University, as described in paragraph 5 above, represents compensation and that, therefore, the University will withhold from the gross amount of this payment, all taxes and other appropriate deductions that it would normally withhold from the earnings of Williamson, and that the University will

report the gross amounts of this payment to governmental agencies as earnings of the individual to whom net payment is made.

7. **TRANSITION SERVICES PROGRAM:** The Parties agree that the University shall provide Grievant assistance in finding a new job through the UCB Transition Services Program Office. The service shall be available to Grievant for a period of two months from the date of execution of this Agreement.
8. **INDEMNIFICATION:** The University agrees to defend and/or indemnify Employee in connection with any civil claim or action arising from acts or omissions that occurred within the scope of Employee's University employment at the Berkeley campus to the extent such defense and/or indemnity is required by the provisions of the California Government Code.
9. **NO FUTURE EMPLOYMENT:** Williamson acknowledges and agrees that any employment or contractual relationship that may have existed between him and the University is terminated and that he has no further employment, contractual, or other relationship with the University, other than as created by this Agreement. Williamson further agrees that he will not seek or accept employment with the University including any of its campuses, offices, facilities, or laboratories at any time in the future.
10. **RELEASE OF ALL CLAIMS ("RELEASED CLAIMS"):** Williamson hereby forever releases and discharges the University and its Regents, agents, successors, assigns, affiliates, attorneys, employees, and all other representatives (hereafter collectively referred to as "University Releasees"), from any and all causes of action, judgments, liens, indebtedness, damages, losses, claims (including attorneys' fees and costs), liabilities and demands of whatsoever kind and character that he may now or hereafter have against University Releasees arising from incidents or events occurring on or before the Effective Date of this Agreement. The release set out in this paragraph specifically covers any and all claims arising from or related to Williamson's employment with and separation from University employment, or arising from any act or omission by any University Releasee occurring before the Effective Date of this Agreement [hereafter "Released Claims"].

The release set out in this paragraph, includes any and all claims arising under statutory or common law, including but not limited to: claims under the Immigration Reform and Control Act; the Family Medical Leave Act and the Higher Education Employer-Employee Relations Act; and claims of

employment discrimination (such as, but not limited to claims under Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991, the California Fair Employment and Housing Act, the Americans with Disabilities Act, the Equal Pay Act of 1963, the Age Discrimination in Employment Act), and claims under the law of contract and tort; and federal and state claims growing out of allegations of retaliation based on alleged or actual whistleblowing activities; and claims arising under University policies and/or collective bargaining agreements; but excluding claims within the exclusive jurisdiction of the Workers Compensation Appeals Board and any other claims that cannot lawfully be released by private agreement.

11. **Covenant Not to Sue:** Williamson promises never to file or cause to be filed a lawsuit or internal University proceeding to assert any Released Claim. Nothing in this Agreement shall affect the U.S. Equal Employment Opportunity Commission's ("EEOC") rights and responsibilities to enforce Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1967, as amended, or any other applicable law, nor shall anything in this Agreement be construed as a basis for interfering with Williamson's protected right to file a charge with, or participate in an investigation or proceeding conducted by the EEOC or any other state, federal or local government entity; EXCEPT THAT, if the EEOC or any other state, federal or local government entity commences an investigation or issues a complaint on Williamson's behalf, Williamson specifically waives and releases his right, if any, to recover any monetary or other benefits of any sort whatsoever including rights to reinstatement to University employment.
12. **Section 1542 Rights Waived:** Employee understands and expressly agrees that the release set forth in this Agreement extends to all claims of whatever nature and kind, known or unknown, suspected or unsuspected, vested or contingent, past, present or future, arising from or attributable to any incident or event relating to University employment occurring in whole or in part on or before the Effective Date of this Agreement or his separation from employment pursuant to this Agreement, and that any and all rights granted under Section 1542 of the California Civil Code, ARE HEREBY EXPRESSLY WAIVED. Section 1542 of the California Civil Code reads as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
WHICH THE CREDITOR DOES NOT KNOW OR
SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE
TIME OF EXECUTING THE RELEASE, WHICH IF**

**KNOWN BY HIM OR HER MUST HAVE MATERIALLY
AFFECTED HIS OR HER SETTLEMENT WITH THE
DEBTOR.**

13. **ATTORNEYS' FEES:** If any party to this Agreement initiates an action to enforce this Agreement, the prevailing party shall recover as costs its attorneys' fees, costs and expenses actually incurred in such action. "Action" includes the University's defense of any claim or lawsuit filed by Employee based on legal claims that have been released and discharged under this Agreement. Such a defense will be considered an action initiated by the University to enforce this Agreement.
14. **CONFIDENTIALITY:** The Parties acknowledge that the University is subject to the California Public Records Act ("CPRA") and that this Agreement constitutes a public record of a type that is generally required to be disclosed upon request. The Parties agree to keep confidential and to not voluntarily disclose to third parties this Agreement unless (1) it is determined to be required by law; (2) permitted under this Agreement; or (3) necessary to the prosecution or defense in a judicial action or administrative proceeding. This provision shall not preclude the Parties from sharing a copy of this Agreement or disclosing its contents to their accountants or attorneys, and in the case of the University, to University officers, agents or employees with a need to know in order to perform their University duties, and in the case of Employee, to a domestic partner, spouse or parent.
15. **VERIFICATION OF EMPLOYMENT:** The Parties agree that Employee will direct any request to verify his history of employment with the University to the Records Management Office ((510) 643-1665) and that only his job title, dates of employment, and final salary shall be provided.
16. **ENTIRE AGREEMENT:** The Parties represent that no promise, inducement, or agreement not discussed in this document has been made between the Parties and that this document contains the entire expression of agreement between the Parties on the subjects addressed herein.
17. **COUNTERPARTS:** This Agreement may be executed in counterparts and a copy of the Agreement is as admissible as the original in any subsequent proceeding.

18. **NO PRECEDENT:** The Parties to this Agreement understand and agree that the execution of this document is not a precedent or model for the resolution or settlement of any future charge, claim, grievance, complaint, or lawsuit resulting from the same, similar, or different circumstances.
19. **OPPORTUNITY FOR REVIEW:** Williamson acknowledges that he enters into this Agreement of his own free will; that he has been encouraged to discuss and did discuss this document with counsel or a representative of his own choosing; and that he has been encouraged to review this document thoroughly. Williamson further warrants that he: (a) fully understands the contents and effect of this Agreement; (b) approves and accepts the terms of this Agreement; (c) agrees to be bound by this Agreement; and (d) freely and voluntarily signs this document.
20. **MODIFICATIONS IN WRITING ONLY:** This Agreement may be modified only in writing signed by all the parties.
21. **SEVEN DAY REVOCATION PERIOD AND EFFECTIVE DATE:**
Williamson shall also have seven (7) days after executing this Agreement to reconsider and revoke this Agreement. Any revocation must be in writing, delivered to Kenneth T. Phillipi, Labor Relations, University of California, 2150 Shattuck Avenue, Suite 750, Berkeley, CA 94704-3540 no later than the close of business of the seventh (7th) day following the execution of this Agreement. This Agreement shall not become effective or enforceable until the seven (7) day revocation period has expired, or until the date of the last signature, whichever is later ("Effective Date"). **If Williamson revokes this Agreement, it shall not be effective or enforceable and he will not receive the consideration described herein.**
22. **CALIFORNIA LAW:** This Agreement is made and entered into in the State of California and shall in all respects be interpreted and enforced in accordance with California law.
23. **BINDING EFFECT:** This Agreement shall bind the heirs, personal representatives, successors, and assigns of each party, and inure to the benefit of each party, its heirs, successors, and assigns.
24. **INTERPRETATION; CONSTRUCTION:** The paragraph headings contained in this Agreement are for convenience only and shall not be used when interpreting this Agreement. This Agreement has been drafted by legal counsel representing the University, but Employee has fully participated in the

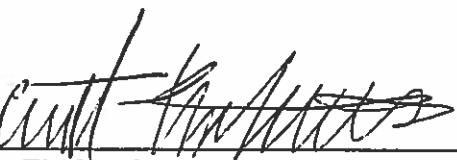
negotiation of its terms. Employee acknowledges that he has had an opportunity to review and discuss each term of this Agreement with legal counsel or a representative of his choosing. Therefore, in interpreting this Agreement the normal rule of construction, which is that any ambiguities in the document are resolved against the drafting party, shall not be employed.

25. **SEVERABILITY**: Should it be determined by a court that any term of this Agreement is unenforceable, or should any term of this Agreement be contrary to state or federal law or regulation, that term shall be deemed to be deleted. However, the validity and enforceability of the remaining terms shall not be affected by the deletion of the unenforceable terms.

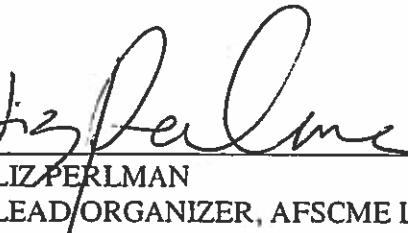
Signature page to follow:

**PLEASE READ CAREFULLY. THIS SETTLEMENT AGREEMENT AND
GENERAL RELEASE INCLUDES A RELEASE OF ALL KNOWN AND
UNKNOWN CLAIMS.**

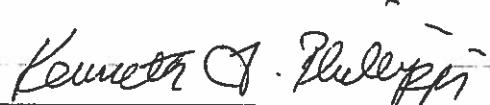
FOR THE EMPLOYEE:

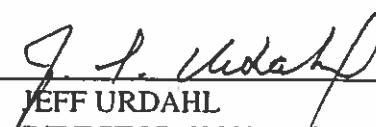
BY:  DATED: 9-13-12
ERNEST WILLIAMSON
GRIEVANT

FOR THE UNION:

BY:  DATED: 9-14-10
LIZ PERLMAN
LEAD ORGANIZER, AFSCME LOCAL 3299

FOR THE REGENTS OF THE UNIVERSITY OF CALIFORNIA:

BY:  DATED: 10/2/2012
KENNETH T. PHILLIPPI
OFFICE OF LABOR RELATIONS

BY:  DATED: 10/2/12
JEFF URDAHL
DIRECTOR, HOUSING OPERATIONS
MAINTENANCE & ENVIRONMENT